



Senate

General Assembly

February Session, 2014

File No. 389

Senate Bill No. 421

Senate, April 7, 2014

The Committee on Commerce reported through SEN. LEBEAU of the 3rd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT CONCERNING CERTAIN BIDDING PREFERENCES IN
STATE AND MUNICIPAL CONTRACTING.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4e-1 of the 2014 supplement to the general statutes
2 is repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2014*):

4 For the purposes of sections 4e-1 to 4e-47, inclusive, and section 2 of
5 this act:

6 (1) "Best value selection" means a contract selection process in which
7 the award of a contract is based on a combination of quality, timeliness
8 and cost factors;

9 (2) "Bid" means an offer, submitted in response to an invitation to
10 bid, to furnish supplies, materials, equipment, construction or
11 contractual services to a state contracting agency under prescribed
12 conditions at a stated price;

13 (3) "Bidder" means a business submitting a bid in response to an
14 invitation to bid by a state contracting agency;

15 (4) "Business" means any individual or sole proprietorship,
16 partnership, firm, corporation, trust, limited liability company, limited
17 liability partnership, joint stock company, joint venture, association or
18 other legal entity through which business for profit or not-for-profit is
19 conducted;

20 (5) "Competitive bidding" means the submission of prices by a
21 business competing for a contract to provide supplies, materials,
22 equipment or contractual services to a state contracting agency, under
23 a procedure in which the contracting authority does not negotiate
24 prices, as set forth in statutes and regulations concerning procurement;

25 (6) "Consultant" means (A) any architect, professional engineer,
26 landscape architect, land surveyor, accountant, interior designer,
27 environmental professional or construction administrator, who is
28 registered or licensed to practice such person's profession in
29 accordance with the applicable provisions of the general statutes, (B)
30 any planner or any environmental, management or financial specialist,
31 or (C) any person who performs professional work in areas including,
32 but not limited to, educational services, medical services, information
33 technology and real estate appraisal;

34 (7) "Consultant services" means those professional services rendered
35 by a consultant and any incidental services that a consultant and those
36 in the consultant's employ are authorized to perform;

37 (8) "Contract" or "state contract" means an agreement or a
38 combination or series of agreements between a state contracting
39 agency or quasi-public agency and a business for:

40 (A) A project for the construction, reconstruction, alteration,
41 remodeling, repair or demolition of any public building, public work,
42 mass transit, rail station, parking garage, rail track or airport;

43 (B) Services, including, but not limited to, consultant and

44 professional services;

45 (C) The acquisition or disposition of personal property;

46 (D) The provision of goods and services, including, but not limited
47 to, the use of purchase of services contracts and personal service
48 agreements;

49 (E) The provision of information technology, state agency
50 information system or telecommunication system facilities, equipment
51 or services;

52 (F) A lease; or

53 (G) A licensing agreement;

54 "Contract" or "state contract" does not include a contract between a
55 state agency or a quasi-public agency and a political subdivision of the
56 state;

57 (9) "Term contract" means the agreement reached when the state
58 accepts a bid or proposal to furnish supplies, materials, equipment or
59 contractual services at a stated price for a specific period of time in
60 response to an invitation to bid;

61 (10) "Contract risk assessment" means (A) the identification and
62 evaluation of loss exposures and risks, including, but not limited to,
63 business and legal risks associated with the contracting process and
64 the contracted goods and services, and (B) the identification,
65 evaluation and implementation of measures available to minimize
66 potential loss exposures and risks;

67 (11) "Contractor" means any business that is awarded, or is a
68 subcontractor under, a contract or an amendment to a contract with a
69 state contracting agency under statutes and regulations concerning
70 procurement, including, but not limited to, a small contractor, minority
71 business enterprise, an individual with a disability, as defined in
72 section 4a-60, or an organization providing products and services by

73 persons with disabilities;

74 (12) "Contractual services" means the furnishing of labor by a
75 contractor, not involving the delivery of a specific end product other
76 than reports, which are merely incidental to the required performance
77 and includes any and all laundry and cleaning service, pest control
78 service, janitorial service, security service, the rental and repair, or
79 maintenance, of equipment, machinery and other state-owned
80 personal property, advertising and photostating, mimeographing,
81 human services and other service arrangements where the services are
82 provided by persons other than state employees. "Contractual services"
83 includes the design, development and implementation of technology,
84 communications or telecommunications systems or the infrastructure
85 pertaining thereto, including hardware and software and services for
86 which a contractor is conferred a benefit by the state, whether or not
87 compensated by the state. "Contractual services" does not include
88 employment agreements or collective bargaining agreements;

89 (13) "Data" means recorded information, regardless of form or
90 characteristic;

91 (14) "Vote of two-thirds of the members of the board present and
92 voting" means a vote by the State Contracting Standards Board that is
93 agreed upon by two-thirds of the members of the State Contracting
94 Standards Board present and voting for a particular purpose and that
95 includes the vote of one member of the board appointed by a
96 legislative leader;

97 (15) "Electronic" means electrical, digital, magnetic, optical,
98 electromagnetic, or any other similar technology;

99 (16) "Emergency procurement" means procurement by a state
100 contracting agency, quasi-public agency, as defined in section 1-120,
101 judicial department or constituent unit of higher education that is
102 made necessary by a sudden, unexpected occurrence that poses a clear
103 and imminent danger to public safety or requires immediate action to
104 prevent or mitigate the loss or impairment of life, health, property or

105 essential public services or in response to a court order, settlement
106 agreement or other similar legal judgment;

107 (17) "Equipment" means personal property of a durable nature that
108 retains its identity throughout its useful life;

109 (18) "Materials" means items required to perform a function or used
110 in a manufacturing process, particularly those incorporated into an
111 end product or consumed in its manufacture;

112 (19) "Nonprofit agency" means any organization that is not a for-
113 profit business under 501(c)(3) of the Internal Revenue Code of 1986, or
114 any subsequent corresponding internal revenue code of the United
115 States, as from time to time amended, makes no distribution to its
116 members, directors or officers and provides services contracted for by
117 (A) the state, or (B) a nonstate entity;

118 (20) "Professional services" means any type of service to the public
119 that requires that members of a profession rendering such service
120 obtain a license or other legal authorization as a condition precedent to
121 the rendition thereof, including, but not limited to, the professional
122 services of architects, professional engineers, or jointly by architects
123 and professional engineers, landscape architects, certified public
124 accountants and public accountants, land surveyors, attorneys-at-law,
125 psychologists, licensed marital and family therapists, licensed
126 professional counselors and licensed clinical social workers as well as
127 such other professional services described in section 33-182a;

128 (21) "Privatization contract" means an agreement or series of
129 agreements between a state contracting agency and a person or entity
130 in which such person or entity agrees to provide services that are
131 substantially similar to and in lieu of services provided, in whole or in
132 part, by state employees, other than contracts with a nonprofit agency,
133 which are in effect as of January 1, 2009, and which through a renewal,
134 modification, extension or rebidding of contracts continue to be
135 provided by a nonprofit agency;

136 (22) "Procurement" means contracting for, buying, purchasing,
137 renting, leasing or otherwise acquiring or disposing of, any supplies,
138 services, including but not limited to, contracts for purchase of services
139 and personal service agreements, interest in real property, or
140 construction, and includes all government functions that relate to such
141 activities, including best value selection and qualification based
142 selection;

143 (23) "Proposer" means a business submitting a proposal to a state
144 contracting agency in response to a request for proposals or other
145 competitive sealed proposal;

146 (24) "Public record" means a public record, as defined in section 1-
147 200;

148 (25) "Qualification based selection" means a contract selection
149 process in which the award of a contract is primarily based on an
150 assessment of contractor qualifications and on the negotiation of a fair
151 and reasonable price;

152 (26) "Regulation" means regulation, as defined in section 4-166;

153 (27) "Request for proposals" means all documents, whether attached
154 or incorporated by reference, utilized for soliciting proposals;

155 (28) "State contracting agency" means any executive branch agency,
156 board, commission, department, office, institution or council. "State
157 contracting agency" does not include the judicial branch, the legislative
158 branch, the offices of the Secretary of the State, the State Comptroller,
159 the Attorney General, the State Treasurer, with respect to their
160 constitutional functions, any state agency with respect to contracts
161 specific to the constitutional and statutory functions of the office of the
162 State Treasurer. For the purposes of section 4e-16, "state contracting
163 agency" includes any constituent unit of the state system of higher
164 education and for the purposes of section 4e-19, "state contracting
165 agency" includes the State Education Resource Center, established
166 under section 10-4q;

167 (29) "Subcontractor" means a subcontractor of a contractor for work
168 under a contract or an amendment to a contract;

169 (30) "Supplies" means any and all articles of personal property,
170 including, but not limited to, equipment, materials, printing, insurance
171 and leases of real property, excluding land or a permanent interest in
172 land furnished to or used by any state agency;

173 (31) "Infrastructure facility" means a building, structure or network
174 of buildings, structures, pipes, controls and equipment that provide
175 transportation, utilities, public education or public safety services.
176 Infrastructure facility includes government office buildings, public
177 schools, jails, water treatment plants, distribution systems and
178 pumping stations, wastewater treatment plants, collections systems
179 and pumping stations, solid waste disposal plants, incinerators,
180 landfills, and related facilities, public roads and streets, highways,
181 public parking facilities, public transportation systems, terminals and
182 rolling stock, rail, air and water port structures, terminals and
183 equipment; and

184 (32) "State employee" means state employee, as defined in section 5-
185 154 and, for purposes of section 4e-16, state employee includes an
186 employee of any state contracting agency.

187 Sec. 2. (NEW) (*Effective October 1, 2014*) (a) Notwithstanding the
188 provisions of chapters 58 to 60, inclusive, and chapter 62 of the general
189 statutes, in the award of a contract, a state contracting agency may
190 adjust each bidder's bid to deduct the amount of state income taxes
191 that will be paid during the term of the contract by such bidder's
192 employees who are employed directly on the bid project. The
193 calculation of such deduction shall be equal to the sum of deductions
194 for each employee assigned to the project, calculated using the
195 following formula: An assumed income tax rate of five per cent
196 multiplied by the listed salary of the employee multiplied by the
197 proportion of the employee's time that would be assigned to the
198 project.

199 (b) If a bidder whose bid was adjusted pursuant to subsection (a) of
200 this section is awarded the state contract, such contract shall provide
201 that, if in executing such contract such bidder pays its employees less
202 in the aggregate than the amount projected in such adjusted bid, the
203 state contracting agency shall pay such bidder an amount less than the
204 amount of the bid prior to its adjustment in accordance with
205 subsection (a) of this section, and such amount shall be equal to the
206 difference between (1) the amount of Connecticut income taxes
207 projected to be paid by its employees in accordance with subsection (a)
208 of this section, and (2) the estimated Connecticut income tax paid by its
209 employees, when assuming an income tax rate of five per cent.

210 (c) Each state contracting agency that awards a contract to a bidder
211 whose bid was adjusted pursuant to subsection (a) of this section shall
212 confirm annually the number of employees actually employed in the
213 state on such project by such bidder in the case of a contract with a
214 duration of more than a year and, if such contract has a duration of less
215 than a year, prior to the final payment for such contract. If the state
216 contracting agency determines that the payment of such bidder needs
217 to be adjusted in accordance with subsection (b) of this section, the
218 state contracting agency shall make such adjustment not later than a
219 year after the awarding of such contract in the case of a contract with a
220 duration of more than a year and, if such contract has a duration of less
221 than a year, at the time of final payment for such contract.

222 Sec. 3. Section 7-148v of the 2014 supplement to the general statutes
223 is repealed and the following is substituted in lieu thereof (*Effective*
224 *October 1, 2014*):

225 Notwithstanding the provisions of any municipal charter or any
226 special act to the contrary, any municipality may, by ordinance,
227 establish requirements for competitive bidding for the award of any
228 contract or the purchase of any real or personal property by the
229 municipality. Such ordinance may provide that [.] (1) except as
230 otherwise required by any provision of the general statutes, sealed
231 bidding shall not be required for contracts or purchases having a value

232 less than or equal to an amount established in the ordinance, which
233 amount shall not be greater than twenty-five thousand dollars, and (2)
234 all other factors being equal, preference shall be given to supplies,
235 materials and equipment produced, assembled or manufactured in the
236 state and services originating and provided in the state. Nothing in this
237 section shall be deemed to invalidate any ordinance enacted by a
238 municipality prior to October 1, 1989. Nothing in this section and no
239 ordinance adopted pursuant to this section shall be construed to limit
240 the ability of a municipality to enter into a contract pursuant to section
241 4a-53a.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2014</i>	4e-1
Sec. 2	<i>October 1, 2014</i>	New section
Sec. 3	<i>October 1, 2014</i>	7-148v

CE *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Dept. of Administrative Services	GF - Potential Cost	2,157,332	2,236,000
Dept. of Transportation	TF - Potential Cost	78,666	118,000
Correction, Dept.; Department of Developmental Services; Board of Regents for Higher Education; UConn; Education, Dept.	GF - Potential Cost	Each Agency 39,333	Each Agency 59,000
State Comptroller - Fringe Benefits ¹	GF - Potential Cost	158,614	237,923

Municipal Impact: None

Explanation

The bill modifies the statutes relating to competitive bidding to allow state agencies to give preference to companies based upon the estimated state income tax paid by employees working for the vendors.

If various state agencies were to consider giving a price preference to companies based on estimated income tax paid to the state, it may increase state administrative costs by approximately \$2.6 million in FY 15. This increased cost would be for additional staff and IT system needs.

Assuming implementation of this price preference on October 1,

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.66% of payroll in FY 15 and FY 16.

2014, there would be a need to hire 11 staff for a total cost of \$591,277 (\$432,663 for salary and \$158,614 for fringe benefits). Four positions would be needed at the Department of Administrative Services (DAS), two positions at the Department of Transportation (DOT), and one additional position would be required at the Department of Corrections (DOC), the Department of Developmental Services (DDS), the Board of Regents for Higher Education (BOR), the University of Connecticut (UConn), and State Department of Education (SDE). These staff would monitor vendors Connecticut income data, confirm the number of employees assigned to a contract, validate adjustments for construction bid submissions and contracts, and assist process management in reconciling various calculations on bid packages and bidder submissions.

Additionally, DAS would need to develop an IT system which is estimated to cost up to \$2 million. Currently, DAS does not have a system that is capable of tracking vendor employee data. A new system would be necessary to maintain vendor data and communicate between vendors and the state, to ensure employees payroll data is processed in accordance to their bids.

Furthermore, various state agencies may see increased contract costs if contracts that would otherwise be awarded to the lowest qualified bidder are instead awarded to companies based on the estimated income tax paid.

The bill also requires municipalities to contract with entities based in Connecticut, when all other factors are equal. This is not anticipated to have a fiscal impact, as it does not require a municipality to choose in-state contractors regardless of cost considerations.

It should also be noted that, to the extent state agencies and municipalities follow the provisions of the bill there may be a potential loss in federal funds due to federal regulations prohibiting specifying a geographic preference for employment.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to agencies implementing estimate income tax payment price preferences for contracts.

OLR Bill Analysis**SB 421*****AN ACT CONCERNING CERTAIN BIDDING PREFERENCES IN STATE AND MUNICIPAL CONTRACTING.*****SUMMARY:**

This bill allows a state contracting agency to deduct from a bid the projected amount of income taxes to be paid to the state during the term of the contract by employees directly employed on the project. The allowable deduction for each employee equals the employee's listed salary multiplied by a 5% tax rate multiplied by the proportion of time the employee is assigned to the bid project. The total allowable deduction is the sum of deductions for each employee. It appears that the deduction for income taxes paid by employees applies only to those employed directly by the bidder and not those employed by any subcontractors that may work on a project.

If the winning bidder's bid is adjusted in this manner, the state contracting agency must include a provision in the contract that allows the state contracting agency to reduce payment to the bidder if it pays its employees less than projected in the bid. The bill requires the agency to reduce the payment by an amount equal to the difference between the amount of state income taxes projected in the bid to be paid by employees and the estimated income taxes actually paid by its employees to Connecticut.

The bill requires the state contracting agency to confirm annually or prior to final payment the number of employees employed on the project. However, it does not require the agency to confirm employees' salaries or proportion of time assigned to the bid project, which are necessary to calculate the estimated income tax paid by employees.

If the state contracting agency determines that the payment to the

bidder must be adjusted for paying its employees less than projected in the bid, it must adjust the payment at the time of final payment or within a year for projects that last longer than one year.

The bill also requires municipalities to give preference in the competitive bidding process, if all other factors are equal, to supplies, materials, equipment, and services originating in Connecticut.

EFFECTIVE DATE: October 1, 2014

DEFINITIONS

Under the bill, a “state contracting agency” refers to any executive branch agency, board, commission, department, office institution, or council. It does not include the judicial or legislative branches, the offices of the Secretary of the State, the State Comptroller, the Attorney General, or the Treasurer, with respect to their constitutional functions.

“Bid” refers to an offer, submitted in response to an invitation to bid, to furnish supplies, materials, equipment, construction, or contractual services to a state contracting agency at a stated price.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Report

Yea 11 Nay 6 03/20/2014